

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

JAMES MICHAEL FECI,

Petitioner,

v.

ROBERT BURTON,

Respondent.

No. 2:20-cv-0878 KJM CKD P

ORDER

Petitioner, a state prisoner proceeding pro se, has filed this application for a writ of habeas corpus under 28 U.S.C. § 2254. The matter was referred to a United States Magistrate Judge as provided by 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On October 30, 2020, the magistrate judge filed findings and recommendations, which were served on all parties and which contained notice to all parties that any objections to the findings and recommendations were to be filed within twenty-one days. ECF No. 26. Petitioner has filed objections to the findings and recommendations. ECF No. 29. Petitioner's objections focus on why he believes his conviction may be unjust, but do not undermine the magistrate judge's conclusions. In particular, petitioner is unable to explain how he has established good cause for a stay as required by *Rhines v. Weber*, 544 U.S. 269 (2005).

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1 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule 304, this
2 court has conducted a *de novo* review of this case. Having reviewed the file, the court finds the
3 findings and recommendations to be supported by the record and by the proper analysis.

4 Accordingly, IT IS HEREBY ORDERED that:

5 1. The findings and recommendations filed October 30, 2020, are adopted in full.
6 2. Respondent's motion to dismiss claims 2, 3 and 4 of the federal habeas corpus petition
7 (ECF No. 10) is granted.

8 3. Petitioner's motion to stay his mixed federal habeas petition (ECF No. 6) pursuant to
9 *Rhines v. Weber*, 544 U.S. 269 (2005), is denied for lack of good cause shown, given that
10 although petitioner has alleged ineffective assistance of counsel but not provided any evidence to
11 support that allegation.

12 3. Petitioner is granted a stay of these proceedings pursuant to *Kelly v. Small*, 315 F.3d
13 1063 (9th Cir. 2003).

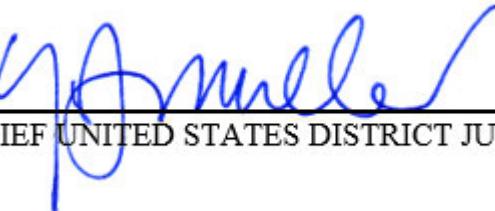
14 4. The Clerk of Court is directed to administratively stay these proceedings until further
15 order of the court.

16 5. Petitioner is directed to file a status report with the court every 90 days indicating
17 whether he has filed a habeas corpus petition in the California Supreme Court in order to exhaust
18 his state court remedies.

19 6. Petitioner is further directed to file a motion to lift the stay within 30 days once the
20 California Supreme Court issues a decision concerning his habeas corpus petition.

21 7. Once the stay of this case is lifted, petitioner will be granted leave to file a first
22 amended 28 U.S.C. § 2254 application adding claims two and four back into the petition.

23 DATED: March 31, 2021.

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25 CHIEF UNITED STATES DISTRICT JUDGE
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